CMPMO No.99 of 2007.

19.7.2007. Present: Mr. A.K. Rattan, Advocate, for the petitioner.

Mr. R.K. Gautam, Senior Advocate, with Mr. Anurag Sharma, Advocate, for the respondent.

The short controversy involved in this petition is with respect to the user of the platform outside the shop in question. Admittedly, the respondent is using the platform outside the shop for the purposes of dyeing of clothes. Earlier the respondent was using a kerosene oil stove but now Mr. Gautam submits that he has switched over to LPG burner but the fact remains that the said portion of the shop on the outside is being used for the purpose of dyeing of clothes. It is not disputed by the respondent that the entrance of the building for reaching the first floor and second floor portion, which is used as a residence by the petitioner-plaintiff-landlord is at the same location where the dyeing activities are being carried out.

In terms of the Court order dated 15th June, 2007, the respondent has produced a photo copy of the rent note which I have seen. This rent note nowhere permits the respondent for using the shop or any portion of it, more particularly that portion which is on the outside and which is the entrance also to the residence of the petitioner for dyeing purposes. Actually para 4 of the rent note clearly specifies that respondent would carry on the work of dry

cleaning in the shop. Dry cleaning is different from dyeing. In any case the work of dry cleaning also was required to be done within the shop only and not outside the shop. I am told that at present the petitioner is using the inside of the shop for selling clothes. He has stopped the work of dry cleaning. There is no doubt that by the use of the platform of the shop for dyeing purposes nuisance is being caused to the petitioner as well as others. Also the petitioner's ingress and egress to his house (residential portion of the building on the I and II floor) is being adversely affected.

The learned trial court was right in granting ad-interim injunction in favour of the petitioner. On the aforesaid premises, I have no doubt that the learned Appeal Court erred in upsetting the trial Court's order and dismissing the petitioner's application for temporary injunction.

On a totality of circumstances, therefore, being satisfied prima facie that the petitioner has made out a good case and that balance of convenience also lies in favour of the petitioner, I set aside the impugned order dated 19th March, 2007 passed by the learned Additional District Judge, Solan and by upholding the order dated 7th July, 2006 passed by the learned Civil Judge (Senior Division), Solan restrain the respondent from using the outside portion of the shop for dyeing purposes. I also restrain the

respondent specifically from causing any interference in the ingress and egress of the petitioner with respect to the residential portion of the building as aforementioned.

The passing of this order or any observation made herein shall not influence the outcome of the suit.

The petition is disposed of.

CMP No. 304 of 2007.

In view of the disposal of the main petition, this application shall stand disposed of.

19th July, 2007. (V.K. Gupta), C.J.
(tr)